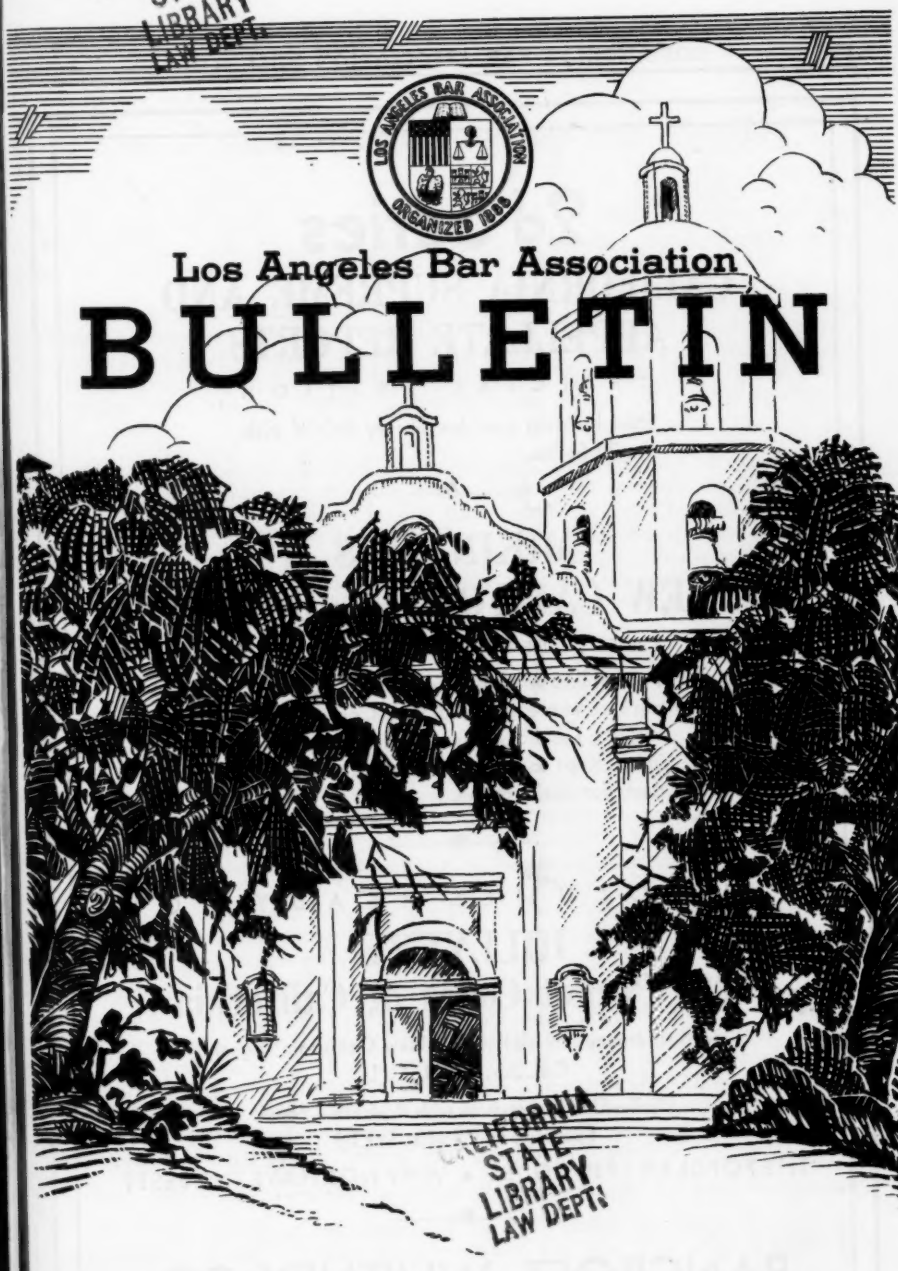

Los Angeles Bar Association

BULLETIN

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SEPTEMBER, 1935

Volume 11
Number 1

The October Monthly Dinner and Meeting

WE have not gotten together since June. Since then the American Bar Association Convention has become history, and before our October meeting the State Bar Convention will have taken place.

I have been asked to tell the members all about our next (October) monthly dinner and meeting. If there ever was a President, or Chairman of the Entertainment Committee, of the Los Angeles Bar Association who could tell definitely, over ten days in advance, just what would happen, or what the program would be at the "next meeting" Ripley would have his picture in the "Believe It or Not" column.

The Entertainment Committee is constantly busy striving to arrange programs that are both educational and entertaining. The morning after one meeting they begin planning the next but their paths are fraught with difficulties and disappointments. Some nationally known and splendid speaker assures us he will be on hand and pleased to speak, only to wire us a few days before the meeting that he has been called to Schenectady to address the annual convention of the Rotary Club. But somehow Rex Hardy and his crew come through each month with flying colors.

All I will say about the October meeting at this moment is that if our plans (and they are well laid) "stay put," we know you will enjoy it, and if present plans fail, we will try something else, just as we have in the past.

Up to Members

So much for *our* side of it. *Now as to yours.* This question of whether or not a meeting is a success depends largely upon the mood and temper of the audience. One man will go to a concert—listen to Lawrence Tibbett sing and think he has been cheated, and say so, while another will listen to a poor amateur, applaud him, and have a wonderful time visiting with his neighbor between acts. After all, one of the chief purposes of these monthly meetings is to afford the members an opportunity to get together, rub elbows, renew acquaintances and exchange ideas.

Come out to the next dinner at the University Club and meet the fellow you wanted to sock in the court room, when the Judge threatened to fine you both for contempt of court, and laugh with him about it. Tell those at your table about your vacation. Lie to your friends about the fish you caught—those three pars in a row, and that birdie on the five-par hole. Talk over the delightful friendships made during the American Bar Association Convention, and the many pleasant memories surrounding that occasion, which was so highly praised by our guests. Bring your friends with you.

Put your shoulder against the wheel and help us keep the good work going.

Watch for the next announcement of the October meeting. It will give you the details of well laid plans and we assure you, you will enjoy it.

Joe Crider, Jr.,
President, Los Angeles Bar Association.

P. S.—You should be proud of the fact that all expenses of the American Bar Convention have been fully paid.

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Junior Barristers Legal Article Contest

The Junior Barristers announce their annual Legal Article Contest, which is open to all of the Junior Barristers under thirty-five years of age and in good standing. The contest will close December 20, 1935.

Full details of the rules of the contest and of the prizes will be announced in the next issue of The Bulletin.

The contest is confined to articles on subjects of current interest to the profession. The essays must not exceed 7,500 words.

SEE THE NEXT BULLETIN FOR FULL DETAILS

Junior Barristers Legal
Article Competition Committee
John J. Ford, *Chairman*
Shirley C. Ward, Jr.
John C. Morrow
Lucien W. Shaw
Robert E. Ford

President Bailie Tells Some Plain Truths to State Bar Convention. Urges Constructive Program for Future in Annual Address and Report of Board of Governors

By Norman A. Bailie, President of The State Bar

A YEAR AGO I said that I intended to bend my efforts toward the consolidation of the members of The State Bar into a united whole, for the improvement of the administration of justice. I thought then and I still think that unity of purpose and unity of effort are vital to the accomplishment of our ideals.

At the outset one is confronted with certain questions: Why is The State Bar? What are its functions? What has it done for the legal profession? In order to answer these questions, it is necessary to ask and answer another question: What are the aims, the objects, the duties, and the destiny of the legal profession? I have spoken and written my views on this last question so many times during the past year that every lawyer who has attended any meeting which I have addressed, or who has read the President's Message in the State Bar Journal, must have reached the conclusion that this subject is an obsession with me. I admit it.

The lawyer is a public official, a public servant, an officer of the court. The law is a profession—not a business. The first duty of a lawyer is to serve, not to make money. Permit me to repeat what I have said many times, that the lawyer's first duty is to the public, his second duty is to his profession, his third duty is to his clients, and his last duty is to himself. The destiny of the legal profession will depend directly upon the manner in which lawyers perform these duties, in the order of importance in which they have been stated. If the lawyers attain the ideals of which they are capable, and which their profession demands of them, the destiny of the legal profession will be public confidence and leadership in its most exalted sense. If they reverse the order, and think of themselves first, the destiny of the legal profession will be public condemnation, leading, perhaps, to eventual extinction.

The State Bar is an organization composed of all the lawyers of the State of California. It exists because without coordinated effort it is impossible for the profession to fulfill its destiny. Its functions are to see that no man or woman shall be admitted to the practice of law in the State of California who is not qualified mentally, morally, and by training to live up to our ideals; to remove from the profession those who, having been admitted, have failed to fulfill our high requirements; and to furnish leadership and cooperation in every forward-looking movement tending to improve the administration of justice. It is not the primary duty of The State Bar, as such, to help its members make money.

* * *

Lawyers' First Duty

Because the first duty of a lawyer is service, it is the function of The State Bar to prevent the practice of law by those unlicensed persons, corporations, and associations whose only purpose is to pay dividends—not primarily because thereby lawyers are deprived of an opportunity to make money, but rather because these individuals, corporations, and associations are not governed by the rules of professional conduct which surround the lawyers, but are acting on their own behalf from purely mercenary motives.

A lawyer is by tradition and training a conservative. He is not swayed by every wind of public opinion. At the same time he comes in close personal contact with people from all walks of life. He is in a position to observe and appreciate legislation made necessary by changing conditions. It is the duty of our organization to oppose ill-advised and unnecessary legislation affecting the administration of justice, and to promote legislation which will improve the administration of justice, in order that the lives, liberties, and properties of rich and poor alike shall be fully protected.

The State Bar has a further duty—to create and maintain proper public relations, to the end that the people of the State of California may become acquainted with our organization and its work, may know the high purposes of our profession, and that the lawyers of this State may be given an opportunity to fulfill their destiny as leaders in every movement for civic and governmental improvement. These are the purposes for which The State Bar was organized and, in order to furnish the necessary finances, every lawyer in California contributes his annual dues.

What has The State Bar done during the past year?

The seven members of the Committee of Bar Examiners, all capable, disinterested, and conscientious lawyers, have given of their time, experience, and ability without stint, and without any compensation other than the consciousness of a duty well performed, in an honest effort to see that those who are qualified mentally, morally, and by training shall be admitted to the State Bar, and that those who are not properly qualified shall not be admitted to practice law in this State. This Committee has been under fire ever since the organization of The State Bar. Its work has been the subject of review by the Supreme Court.

It was investigated by a committee appointed by the Assembly to investigate The State Bar. Its record is clear and above reproach. Its examinations are fair and at the same time comprehensive. The principal reason why applicants fail is that they are unprepared. It is no favor to admit into the conflict of the legal profession the weak, or those who are liable to fall by the wayside. Not only every lawyer, but every citizen of California owes a debt of gratitude to the Committee of Bar Examiners.

Disciplinary Work

The disagreeable but necessary work of The State Bar is that of discipline. This duty is being performed ably but quietly. During the past year over six hundred fifty lawyers have been handling these cases without compensation or hope of reward. From January 1, 1934, to July 31, 1935, fifty-one cases were recommended to the Supreme Court for suspension or disbarment. Of those, forty-six were affirmed, four were modified, and one reversed. Those cases represent but a small fraction of the investigations made by The State Bar, because the great majority of complaints result in dismissals or public or private reprovals.

The Assembly Investigating Committee spent considerable time in taking testimony on our activities, and finally, with our cooperation, conducted a plebiscite on the question, "Do you favor the repeal of the State Bar Act?" The vote was 1899 for, and 5457 against repeal. While the result was highly gratifying to those of us actively in charge, I cannot but remark that several thousand lawyers did not take the trouble to vote at all. If we are to have a really effective organization, ALL the lawyers must take an active interest in what we are doing. There is far too prevalent a disposition to "Let George do it."

Bank Treaty

The treaty between the California Bankers Association and The State Bar is an accomplished fact. Negotiations were commenced while Mr. Wyckoff was President, and carried to completion by a committee of three representing us and

a similar committee representing the bankers. It is an outstanding piece of work which reflects credit upon both organizations. There is no doubt of the good faith of the contracting parties. There has not been time enough to determine whether or not it will accomplish the results anticipated, but both sides should be willing to give it a fair trial.

The Committee on Administration of Justice considered and sifted out a great mass of proposed legislation, and drafted certain bills looking toward improvement of court procedure. These bills were introduced, and a considerable number were enacted into law. Some failed for lack of proper cooperation between The State Bar and local bar associations. This should not happen again. The State Bar should be a clearing house through which all proposed legislation within our jurisdiction should pass, and the lawyers should put aside their personal interests, and all work for the common good.

It is my opinion that substantive legislation should not be undertaken by us. Neither should we sponsor bills of a controversial nature, because our organization represents all the conflicting opinions on political and economic subjects. Our efforts should be confined to legislation which will improve the administration of justice.

Ambulance Chasing

A great deal has been done by our Committee on Ambulance Chasing. This is a permanent assignment. Ambulance chasing is like eczema, clear it up in one place and it breaks out in another. It is a lucrative racket and therefore difficult to eradicate. It attacks the very foundation of confidence between attorney and client, and makes the lawyer the tool of the chaser, whose sole purpose is to make money, no matter how.

Our Committee on Criminal Practice is proceeding quietly and effectively, working in conjunction with the Committee on Ambulance Chasing. Already many evils formerly prevalent about the jail and criminal courts in Los Angeles county have been corrected. We are receiving cooperation from the courts, the District Attorney, the City Attorney, the Sheriff's office, and the Police Department. Particulars cannot be given at this time, but the personnel of the committee is such that final results are assured.

We have had a session of the State Legislature, and numerous bills were introduced tending to kill or cripple The State Bar. None of these bills passed. This indicates that the people of the State as a whole have come to recognize our organization as a public necessity. That in itself is a worthwhile accomplishment.

Our work on admissions and discipline is well organized and efficiently handled. Our legislative operations are not wholly effective, due largely to the fact that many lawyers and lawyers' organizations try independently to promote legislation, some of which is good, some ill-advised, but all lacking the strength of concerted effort. We must get together and stay together, and stop "shooting with a shotgun." Furthermore, we must convince the people of this State and the civil organizations that legislation proposed by us is in the public interest, and not, for our own selfish benefit. I cannot emphasize too strongly that we must have public support if we are to accomplish anything.

Public Relations

What has The State Bar done along the line of public relations? The members of the Board of Governors have addressed approximately seventy-five meetings of bar associations and civic organizations, carrying our message to all parts of the State, and explaining what we are trying to do. We have had some publicity, largely favorable, partly critical. I have come to the conclusion that lawyers do not know what good publicity is nor how to get it.

We cannot hope for public respect for the bar unless we ourselves have respect for our profession. We are suffering from an inferiority complex. We wince at every gibe from pulpit, press, or platform. We sit supinely by while people—yes, and our own members—proclaim that the bar is in disgrace. The bar is not in disgrace. There is a greater proportion of honest, capable, industrious men and women in our profession than in any other profession or business in the country, and we are the only class who are systematically and persistently engaged in making our profession clean at the source, and removing the impurities that accumulate as it flows along. Furthermore, there is no other class of persons so constantly engaged in quiet, unselfish effort for the betterment of mankind. But the public does not know these things. What then is to be done?

I envisage a public relations department for The State Bar in charge of an experienced and energetic director. He would be both a lawyer and a publicity man—a lawyer because he must know our ideals and our problems, a publicity man because he must know what the average lawyer does not, and probably never will know—how to get our message to the public. He should be supplied with a sufficient staff and should be in constant touch with all the activities of The State Bar, and the local bar associations, as well as the civic organizations and clubs. He should arrange meetings of bar associations throughout the State and assist in furnishing programs. He should supervise newspaper and radio publicity, and, in general, conduct a campaign of education. This should be a permanent department of State Bar work.

I have given this matter considerable thought and have conferred with lawyers, newspaper men, and business men. I am fully convinced that there is no other effective way to accomplish the result. But such a department will cost approximately $12,000 a year, and the funds of The State Bar are insufficient to attempt it. I hesitate to suggest an increase in dues, but if one dollar a year were added with the distinct understanding that the entire amount so collected would be allocated to this purpose, we could carry on the work successfully.

What State Bar Has Done

As this talk draws to close, I can imagine members saying to themselves, "These things are all right, but what has The State Bar done and what does it propose to do for me?" I am reminded of the old lady who went to a dentist to get a set of false teeth. The dentist took out a sample set and showed her how symmetrical they were, how perfectly the gums were tinted. When he finished she said, "I know all that, but can you eat with them?"

"What has The State Bar done and what does it propose to do for me?" My answer is, "Self-reverence, self-knowledge, self-control—these three alone lead life to sovereign power." The State Bar can see that only those who promise to be a credit to the profession are admitted to practice. It can cause the removal of those who, being admitted, disgrace our high calling. It can curb those, not lawyers, who attempt to practice law, solely for the purpose of making money. It can aid in promoting legislation looking to the improvement in the administration of justice. It can encourage a feeling of confidence in our profession on the part of the public. These things it has done, is doing, and will continue to do.

But it rests with the individual lawyer to so live and act, to so conduct his practice, to so cooperate with his organization, that our clients—the public—will have such confidence in us, individually and as a profession, that they will come to us for legal advice and counsel, instead of going to the notary, the realtor, the banker, the ambulance chaser. When this comes to pass, the material benefits are bound to follow. It is an end well worth striving for, but to reach it requires the united efforts of every lawyer in California.

The Duty of District Courts of Appeal in Connection with Petitions for Hearing

By Herman F. Selvin, of the Los Angeles Bar

IN a recent decision Mr. Justices Crail and Stephens, commenting upon the apparent misunderstanding among lawyers of the principles governing petitions for hearing by the Supreme Court, indicated that there is no duty on a District Court of Appeal to "include detailed recitations of facts" in its opinions.[1] At the same time Judge Stephens advised not only the Bar but the Bench as well to familiarize themselves with the relevant decisions on this question.[2]

The comments of these judges justify some further exploration into the subject, with particular regard to the functions of counsel and court respectively in the process of procuring a Supreme Court review of a case decided by a District Court of Appeal. Such a study is particularly justified because, in the view of the writer, the very nature of the rules which the Supreme Court has fixed to guide it in passing on petitions for hearing, requires that in cases appealed directly to a District Court of Appeal all material and relevant facts necessarily involved in that court's determination of a question of law appear on the face of its opinion. A brief survey of these rules, it is believed, will demonstrate this assertion.

The rules which the Supreme Court has imposed for itself in passing upon petitions for hearing stem logically out of the constitutional system of review established in this state. The theory of that system is that justice and due process are satisfied if the unsuccessful litigant is given one opportunity for review by a higher court.[3] In the great majority of cases this power of review is vested in the District Courts of Appeal[4] and, except as the Supreme Court may decide otherwise by granting a hearing, the decision of the Court of Appeal is intended to be final.[5] In a limited class of cases, however, the right of review is vested in the Supreme Court to be exercised on direct appeal to that court.[6] Even in this group of cases the Supreme Court may transfer the cause to one of the District Courts of Appeal,[7] so that the question of petitions for hearing arises here, too.

The considerations which control the matter of granting or denying a hearing in the Supreme Court, as might well be expected, are different in the two types of cases, *i. e.*, those appealed to the District Court of Appeal and those appealed to the Supreme Court but transferred to the Court of Appeal. Since, in the first group, finality is intended to accompany the District Court's judgment, the Supreme Court, on a petition for hearing does not concern itself with the correctness of the decision on the case made out in the record or as between the parties.[8] It is concerned, however, with the validity of the decision as a precedent, that is, with its consistency with previous decisions and with the public importance of the questions of law upon which it rules.[9]

Accordingly, when a petition for hearing in this type of case comes before the Supreme Court that tribunal, it has said, does not look to the underlying

1. *Koeberle v. Hotchkiss,* 82 Cal. App. Dec. 508, 510-11.
2. *Koeberle v. Hotchkiss, supra,* n. 1, at p. 513.
3. *People v. Davis,* 147 Cal. 346, 349, 81 Pac. 718.
4. Const., Art. VI, Sec. 4b.
5. *People v. Davis, supra,* n. 3; Const., Art. VI, Sec. 4c.
6. Const., Art. VI, Sec. 4.
7. Const., Art. VI, Sec. 4c.
8. *People v. Davis, supra,* n. 3; *Burke v. Maze,* 10 Cal. App. 206, 211, 101 Pac. 438; *Oliver v. Superior Court,* 193 Cal. 61, 223 Pac. 558; *Rauer's Law etc. Co. v. Berthiaume,* 21 Cal. App. 670, 675, 132 Pac. 596, 833. See, *People v. Patterson,* 64 Cal. App. 223, 229, 221 Pac. 394.
This self-imposed limitation is not recognized by the Supreme Court in cases of *original proceedings* commenced in a District Court of Appeal. *Rockridge Place Co. v. City Council,* 178 Cal. 59, 60, 172 Pac. 1110.
9. Cases cited, *supra,* n. 8.

record but solely to the opinion—and whether or not a hearing will be granted depends on its view of the importance of the legal principles involved on the face of the opinion and the consistency of the expressed decision with established law.[10]

It should, therefore, be fruitless in this class of case to urge as a ground of hearing that the decision, although correct on its face, is incorrect when facts appearing in the record but not in the opinion are taken into consideration. That is a matter which touches only that phase of the decision with which the Supreme Court will not concern itself.

If, however, the case is one which, in the first instance, went to the Supreme Court and was transferred to a District Court, a different situation is presented. Under our system of appeals the parties are entitled to the Supreme Court's decision on the case as made out.[11] The private side of the decision, that is, its correctness as between the parties, is, by constitutional mandate, a matter upon which the litigants are entitled to that court's review.

Consequently, when a case of this class is presented by a petition for hearing, the grounds upon which it will be granted are not confined to considerations arising out of the validity of the decision as a precedent. The Supreme Court must examine and determine the validity of the decision as between the parties as well as on the case stated in the District Court's opinion, in order that the parties may have their constitutional right to a review by the highest court.[12] Of course, this does not mean that a hearing will be granted as a matter of right. It means only that the determination of whether or not a hearing should be had will be made to depend on a review of the entire case as such.[13] Petitions for hearing, even in this second group, are frequently denied because, presumably, the case, even in its private aspect, was correctly decided by the District Court of Appeal.[14]

It is at once apparent that in this second group the form or the completeness of the District Court's opinion has no bearing upon the ultimate granting or denial of a hearing. If facts have been omitted or misconceived or misapplied the Supreme Court may, and on proper suggestion will, go to the record and form its own judgment on the case as a whole. A full statement of the facts in the opinion is important, in this connection, only as an aid to the Supreme Court in passing on the case.

Manifestly, however, the form of the Court of Appeals' opinion may be of conclusive significance in the first class of cases. An opinion, apparently correct on the facts stated therein, or not presenting any important question of law on its face, may be erroneous upon *all* the facts in the case. Yet, no matter how important the point of law actually in issue may be, or how erroneously it was decided, a hearing in the Supreme Court will ordinarily be denied because on its face—and therefore, as a precedent—the opinion is either correct or involves no important principle.[15]

Fairness, not only to litigants, but to the public for whom a decision makes general law, would seem to require, therefore, that all the material and relevant facts upon which a question of law depends be accurately stated in the opinion. Only in this way can a proper determination of the right to a hearing in the Supreme Court be made, and important questions of law brought before it.

It is not enough, as Mr. Justice Stephens intimated,[16] merely to write a short discussion of the principle of law involved in any case. Questions of law, it must be remembered, do not arise *in vacuo*. They are necessarily predicated upon facts. When, therefore, the matter ruled upon is really one of law the

10. Cases cited, *supra*, n. 8.
11. *Burke v. Maze*, *supra*, n. 8.
12. *Burke v. Maze*, *supra*, n. 8.
13. Cases cited, *supra*, n. 8.
14. *People v. Davis*, *supra*, n. 3.
15. Cases cited, *supra*, n. 8.
16. *Supra*, n. 1.

facts upon which it depends are essential to any intelligent understanding and analysis of the opinion.

Of course when the issue ruled upon on appeal is strictly one of fact the practice, announced in *Koeberle v. Hotchkiss*,[17] of not reciting the evidence is perfectly proper. But if injustice is not to be done this practice ought to be confined to questions of fact strictly so-called. Many questions of law arise on appeal in the *form* of a question of fact. For example, a finding of ultimate fact—such as that a contract was effectively executed or that the defendant was not guilty of contributory negligence and the like—may be attacked as unsupported by the evidence. The attack is based, however, not as is usually the case on the absence of testimony, but on the proposition that as a *matter of law* the evidentiary facts do not sustain the ultimate fact found. Such a contention although factual in form really raises a question of law. To dispose of it on appeal by the statement that the evidence does support the finding, although responsive to the form of the contention, actually begs the question on its merits—and perhaps, even more important, rather effectively precludes a proper consideration of the matter by the Supreme Court on petition for hearing.

The public at least, if not the litigant, is entitled to have the Supreme Court's judgment on matters of importance. The prerogative of determining whether, in any case, the principle involved is sufficiently important to warrant the highest court's intervention is vested in that court. Certainly it is not asking too much that all the materials necessary to an intelligent exercise of that prerogative be placed before it.

17 *Supra* n. 1.

1934-1935
Legislative Changes in the Probate Code

By Florence M. Bischoff, Court Commissioner

THE important changes in probate procedure in the recent legislative enactments are as follows:

Succession—Separate Property

Section 201.5 of the Probate Code is a new section making an important change in the law of succession. It provides that either husband or wife shall have testamentary disposition over one-half of the personal property which has been acquired after marriage while domiciled elsewhere, if such property would not have been the separate property of either if acquired while domiciled in California; the other half belongs to the surviving spouse; and in the absence of testamentary disposition it all goes to the surviving spouse.

Suits by or Against Personal Representatives

Section 573 which permits executors and administrators to sue or be sued in actions for the recovery of real property and actions founded upon contracts, is amended to include suits by the State of California or by any political subdivision thereof founded upon a statutory liability of the decedent for charitable relief furnished to him or rleatives for whose support he is responsible.

Extension of Obligation Due Decedent

Section 578 is amended to allow the personal representative of a decedent, upon an order of the Court, to renew, extend or modify the terms of any obligation in favor of the decedent.

Easements

Section 587 providing for the dedication of easements by executors or administrators is enlarged to provide for dedication of easements for any of the purposes for which an easement may be acquired under the right of eminent domain; and that such easements may be conveyed to any district or corporation permitted to acquire property under the power of eminent domain.

Instructions by the Court

Section 600 has been amended to require an *extra* copy of the inventory of each estate to be filed with the County Clerk to be sent by the County Clerk to the County Assessor.

Summary Probate

Sections 630 and 631. The sections which provide for the transfer of certain property of a decedent when the total value of the decedent's property does not exceed $1000 are amended to include money due his estate under the terms of any insurance policy; and household furniture and furnishings; and personal clothing and personal effects; and to provide for the transfer thereof by an insurance company, or by the receiver, liquidator or trustee of a bank.

Sales

Sections 789, 790 and 791 relating to sales of real property subject to liens, the method of discharging such liens, and cases in which the lien holder is the purchaser have been repealed; and re-enacted as new sections numbered 762, 763 and 764, and as so re-enacted include personal property.

Section 784 has been amended by omitting the requirement for a descrip-

tion of the real property sold in the notice of hearing of the petition for confirmation.

Borrowing Money

Section 830 has been amended to add to the authority for borrowing money upon the property of the estate, authority to execute extension agreements, and the authority to co-operate jointly with co-owner or co-owners when the property of the estate consists of an undivided fractional interest in real or personal property for the purpose of making a loan.

Liens

Section 834 which provides for the effect of liens upon property of the estate has been amended to include pledges as well as mortgages and deeds of trust, and to make the section applicable to personal as well as real property.

Leases

Section 842 providing for leasing of property in an estate now makes mandatory the inclusion in the order of the minimum rental or royalty, and the period of the lease.

Exchanges

Section 860 which provides for the exchange of property in a decedent's estate has been amended to apply to personal as well as real property.

Termination of Estates

A new section numbered 1068 has been added which authorizes the termination of estate proceedings and discharge of executor or administrator when it appears that there is no property belonging to the estate subject to administration, upon a hearing of a report thereof after notice under section 1200.

Public Administrator—Summary Probate

The section (1144) which provides that the Public Administrator may upon Court order summarily dispose of a decedent's property to apply upon funeral expenses and expenses of the last illness of a decedent has been amended to increase the value of such property to $200.

Notice by Publication

Section 1201 is amended to include a sub-lease in the enumeration of petitions which require publication; and clarifies the requirement for notice by posting (Section 1200) as well as by publication; and further clarifies the requirement that publication be made in the county in which the estate is being probated.

Appealable Orders

Section 1240 is amended to include among appealable orders one instructing or directing, or refusing to instruct or direct an executor or administrator.

Estates of Missing Persons

A new division (IIa) has been added to provide for the administration of estates of missing persons. It includes the appointment of trustees of estates of persons missing over 90 days under certain circumstances; and for the administration of the estates of persons missing over 7 years. Section 1822 *et seq.* of the Code of Civil Procedure referring to estates of missing persons have been repealed and the law re-enacted in this division.

Guardian and Ward

Appointment of Guardian—Citation

Section 1461 has been amended to incorporate substantially the language of Sections 1206 and 1207 which provides for the issuance by the Clerk of

a citation to an alleged incompetent person at least five days before the hearing of a petition for appointment of a guardian. It further provides that if the alleged incompetent is unable to attend by reason of physical inability such inability must be evidenced by a certificate of a physician or the superintendent of a State hospital in which the alleged incompetent in confined.

Compromise of Debt Due Ward

Section 1515 providing for the dedication of easements by guardians is enlarged to provide for dedication of easements for any of the purposes for which an easement may be acquired under the right of eminent domain; and that such easements may be conveyed to any district or corporation permitted to acquire property under the power of eminent domain.

Instructions by Court

A new section numbered 1516 gives the Court power to instruct the guardian on the administration of the ward's estate and its management.

Borrowing Money—Transactions With Co-owners

Section 1535 has been amended to authorize a guardian to co-operate jointly with a co-owner or co-owners when the property of the estate consists of an undivided fractional interest in real or personal property for the purpose of making a loan. It further provides that in the case of a foreclosure or sale under the lien, mortgage, or deed of trust thereunder, if the proceeds of the sale of the encumbered property are insufficient no judgment or claim for any deficiency shall be allowed against the ward.

Leases

A new section (1538.5) provides that in a guardianship an order authorizing the execution of a lease shall prescribe the minimum rental or royalty; and further provides that the term of the lease shall not be for a period longer than 10 years except in case of a lease for oil or mineral rights which shall not be for more than 20 years.

Exchanges

Section 1540 which authorizes the guardian to exchange properties of the ward now provides that the provisions of the Code governing exchanges of property by administrators shall govern exchanges by guardians.

Accounts Where Ward Patient of State Hospital

Section 1554 which provides for notice to the Attorney General or Director of Institutions upon the filing of a guardian's account now requires notice of time and place of hearing and a copy of the account to be sent to the Director of Institutions or Attorney General at least five days before the hearing.

Care and Maintenance of Dependent Relatives

A new section numbered 1558 is added which section provides for allowance by the Court to the next of kin of an incompetent person out of the surplus income of such ward.

Termination of Guardianship

Section 1559 (new) authorizes the termination of the guardianship of the estate of a ward and the discharge of the guardian of the estate upon the settlement of an account showing the estate to be entirely exhausted.

(NOTE: But see Section 1593 which provides that a guardian appointed by a Court is not entitled to his discharge until one year after the ward's majority.)

Appealable Orders

Section 1630 is amended to include among appealable orders in guardianships one instructing or directing, or refusing to instruct or direct a guardian.

1935 Changes in the Code of Civil Procedure Affecting the Municipal Court

(Effective September 15, 1935.)

Compiled by Geo. M. Goodell and Frank L. Holt of the Municipal Court

117d Provides that small claims trials shall be set not more than 15 days nor less than 3 days from the date of the order for trial whereas it heretofore provided that the trial should be not more than 13 days nor less than 3 days.

117p Provides for a fee of 50¢ for the mailing of the notice of trial in the small claims court instead of 25¢ as heretofore.

117q Now affirmatively provides that the cost of service may be added to the judgment along with other costs.

284 Provides that the court shall determine the contingent fee of the attorney who is being substituted out of a civil case.

396a Now provides that if a complaint within the subject matter jurisdiction of the Class B justices' courts is filed without showing venue facts the court may by order allow it to be amended, or a separate affidavit to be filed, to conform to the requirements for the stating of facts which show what the proper court for trial is. (Heretofore it has been the practice of the municipal court to allow the filing of the amended complaint or affidavit without an order of court.)

539 Now permits the filing of a bond for attachment in an amount greater than the amount of the claim (this section had been construed heretofore to mean that the clerk could not accept a bond in excess of the amount of the claim).

581 Now provides that where the complaint is dismissed by the plaintiff without the consent of his attorney an order of court must be secured.

601 Now provides that each side in a civil jury trial may have six peremptory challenges instead of four as heretofore.

655 A new section making the provisions of the code in relation to new trials applicable to superior and municipal courts only. (Apparently this will have the effect of abolishing new trials in justices' and small claims courts.)

675 Now provides that where an abstract of judgment has been recorded, a satisfaction thereof may be recorded or made in the margin of the recorder's record. (This raises a question as to whether or not such marginal satisfaction is the exclusive method in such cases. The other methods of satisfying judgments have not been changed.)

675b New section providing that a bankrupt, at any time after one year has elapsed, may secure an order vacating a judgment if the judgment or cause of action was listed in the schedule.

689 Has the following new provisions: The third party claimant must set out his title; the third party claim which is filed with the levying officer must be filed by the levying officer in the court; the court may allow the claim to be amended; the claim constitutes the pleading of the third party claimant and shall be deemed controverted by the plaintiff or other person in whose favor the writ runs; the third party claimant has a right to a hearing to determine title even though the plaintiff does not

file a bond against the third party claim; the court may fix the amount of the bond if it is found not sufficient. The petition for hearing to determine title must be filed within ten days after the delivery of the third party claim to the levying officer; the burden of proof is on the claimant; no findings are required; jury trial is not prohibited; an appeal is allowed; the court may stay execution, sale or forbid the transfer of property pending the hearing and may require a bond as condition therefor.

953a Transcript on appeal. The 20 days for reporter to file transcript runs from the clerk's notice to reporter and then not until the fees are provided for. The reporter shall not postpone the filing of the transcript except upon order of the court upon affidavits served upon the attorneys. The clerk of court is to set the time for presenting the transcript to the judge and to give five days notice to attorneys. A new paragraph provides "said bill of exceptions so settled and allowed shall be printed and filed with the clerk of the court to which the appeal is taken within 20 days after said bill is settled and allowed." Inasmuch as this section otherwise relates only to reporter's transcripts the meaning of this paragraph seems quite doubtful.

983a The time for appeal from civil judgment in the municipal court is limited to 60 days from entry of judgment unless motion for new trial is pending. The time for appeal from an order runs from notice of entry of order instead of from the making of the order.

988a&b Both require that papers in a bill of exceptions or transcript be indexed.

990 Summons on joint debtor proceedings is to be issued by the clerk upon the filing of the proper affidavit. Apparently a court order is not needed for the issuance of summons now.

1005 The time for service of notice of motion is increased one day for each 100 miles instead of for each 50 miles.

1206 Provides for hearing on preferred labor claim in the court from which the attachment or execution has been issued. An outline of the procedure is as follows:

The labor claimant may file his preferred verified labor claim—1, with levying officer; 2, copy to court; 3, copies to plaintiff and defendant.

Within five days of receiving copy, plaintiff or defendant may file with the levying officer a verified denial and mail or serve copy on the claimant.

Within ten days of deposit in mail or service of denial the claimant may file a petition for hearing. (If 2 or more levies—file in court of senior levy.)

Within twenty days of filing petition—hearing must be had and ten days notice must be given by petitioner to plaintiff and defendant and all parties claiming interest; anyone of whom may dispute the claim at the hearing.

No cost for filing or hearing petition.

1989 Provides that witnesses from outside the county may be required to attend from as far distant as 100 miles.

2021 An agent or employee of a corporation or of an individual may be required to give his deposition where the corporation or individual is a party to the action.

Special Assessment Indebtedness Readjustment Laws of the Last Legislature

By Marshall Stimson, of the Los Angeles Bar

THE adjustment of special assessment indebtedness is a major problem in many of the counties of California and especially Los Angeles County. At the present time, there is outstanding approximately $44,563,386.00 of special assessment district bonds. The percentage of delinquency is very high. In these districts there is delinquent $2,296,692.00 of city and county taxes.

The problem is a serious one to all concerned. The general public is affected because large areas of real estate are withdrawn from tax revenue purposes. Administrative business of many municipalities is crippled and higher tax rates result against the property which is carrying the tax burden. The property owners are concerned because in these districts where the special assessment levies are based upon the Ad Valorem plan the general taxes and special assessment taxes are collected together and one cannot be paid without the other and, under the provisions of the law, the delinquencies of those not paying can be apportioned against those who do pay. All property real movement in these districts is at an absolute standstill. Ultimately, unless a remedy is found, property owners must lose their real estate.

The bondholders are vitally interested because they have a very uncertain method of enforcing collection in the cases of delinquency. Their only remedy is a Tax Collector's Sale of each piece of property on which the taxes have been delinquent for five years. If they bid in the property and take title by the tax deed, they must first pay up all of the delinquent city and county taxes in cash. They then become the owners of the property and thereafter the property which they acquire is subject to the levy of the special assessment taxes. Further, the only title which they receive being a Tax Collector's Deed, they must prosecute a suit to quiet title in order to obtain a marketable title.

Co-operation Necessary

More than three years ago, I made the statement that there were three parties interested—the public, the property owners and the bondholders; that if the problem was to be solved, all must co-operate along these lines: There must be an allocation of public funds to the extent of public interest. The amount that the property owners can pay must be ascertained and the bondholders must voluntarily reduce the indebtedness to an amount equal to the amount that it is ascertained that the property owners can pay, plus the public funds allocated for the relief of the district.

This plan was bitterly opposed by the bondholders. An attempt was made through their attorneys to draft acts for the readjustment of the indebtedness. Both of these acts—the Refunding Act of 1931 and the Readjustment Act of 1933—were declared by the Supreme Court unconstitutional.

Recent Legislation

At the last Legislature, various bills for relief and adjustment of special assessment indebtedness were enacted into law. A brief summary of these measures follows:

A. B. 385, *now Chap.* 393—provides for the readjustment with the consent of the owners of more than one-half of the area in the district and seventy-five per cent of the bondholders. A new assessment is levied based upon the benefits to each individual piece of property. The unpaid assessments are represented by a bond under the 1911 Act. Provision is made for the payment of non-consenting bondholders.

A. B. 662, now Chap. 728—provides for a refunding of bonds issued under the Bond Improvement Act of 1915. The legislative body which enacted the proceedings makes a contract with seventy-five per cent or more of the bondholders and then levies a new assessment and issues refunding bonds for the reduced amount. Under this act, in the cases of delinquencies the county or municipalities could be compelled to make a general tax levy of one mill on all of the property in the county or municipality to make up the deficiency.

A. B. 663, now Chap. 729—provides for certain amendments to the Ad Valorem Assesment Refunding Act of 1933. These amendments are designed to meet the objectionable provisions of the Act of 1933 as set forth by the Supreme Court in its opinion which declared the Act unconstitutional. This Act provides for the expenses of the readjustment to be taken from the general fund. It also gives the right of protest and requires the positive consent of fifty per cent of the property owners and provides a means of payment for non-consenting bondholders. A readjustment is made on the basis of an individual lien on each piece of property, under the 1911 Improvement Bond Act.

A. B. 668, now Chap. 732—provides for a readjustment of the bonded indebtedness and the issuance of bonds under provisions similar to those of the 1915 District Bond Act, in which the general taxes and the special assessment taxes are collected in the same tax bill and delinquencies enforced in the same manner as with general tax delinquencies. The county or municipality issuing the refunded indebtedness can be compelled to levy an assessment each year to the extent of one mill on the ability of the property owner to meet the delinquencies.

A. B. 384, now Chap. 354—is an enabling act to set up the machinery for carrying out a voluntary settlement between the property owners and the bondholders in the district. It also enables the legislative body to buy bonds, to refund under any act, or to use the Federal bankruptcy laws. The legislative body is given power to pay the expenses of the refunding proceedings. It is also given the power to cancel the delinquent special assessment levies.

Unfortunate Situation

This Act was drawn by myself to enable property owners and bondholders, who recognize the unfortunate situation in which they both find themselves, to make a compromise and carry it into effect either by voluntary agreement or through any of the other refunding acts or bankruptcy.

Another purpose in having this law enacted was to meet a situation which might arise should the Supreme Court again declare the other refunding acts unconstitutional. In such event, the only possible solution would be a voluntary agreement and a law was necessary to provide the method of carrylng out that arrangement.

A. B. 75, now Chap. 15—This is the only legislation which affects assessments which are a direct lien against each separate property, such as provided in the 1911 Act.

This bill provides that the right of foreclosing any delinquent bond shall be suspended until February, 1937, on all bonds on which the interest coupons are fully paid. The solution of the problem of the readjustment of this vast amount of indebtedness will require the utmost patience, forbearance and good sense of all parties concerned. The public bodies must realize the extent of the public interest and the necessity to make public contributions. The bondholders must realize the unfortunate situation in which they find themselves, with a large percentage of the districts wholly unable to make their payments and only a clumsy and almost wholly inadequate means of enforcing payment of the bonds. The property owners must be willing to take on the burden of a reasonable amount of indebtedness which is within their ability to pay and make every effort in good faith to carry out the readjustment program.

Philbrick McCoy Appointed Member of American Bar Association Committee

PHILBRICK McCOY of the Los Angeles Bar, was recently appointed a member of the American Bar Association Committee on Professional Ethics and Grievances. This is one of the important committees of the American Bar Association, due to the fact that their opinions have a far-reaching effect on lawyers in all parts of the United States.

The committee is as follows: Robert T. McCracken, chairman; Herschel W. Arant, James Ailshie, Philbrick McCoy, Arthur E. Sutherland, George B. Martin, Orie L. Phillips.

Mr. McCoy has been a member of the Los Angeles Bar Association Committee on Legal Ethics for the past three years and has devoted a great deal of time to this committee work.

Upon receipt of his appointment to the American Bar Association Committee, Mr. McCoy tendered his resignation as member of the Committee on Legal Ethics of the Los Angeles Bar Association to the Board of Trustees. After due consideration, the resignation was respectfully declined as the members of the Board felt that Mr. McCoy's appointment to the American Bar Association Committee would not interfere with his duties as a member of the Los Angeles Bar Association Committee.

Delegates to State Bar Convention Meet in San Francisco

PRECEDING the 1935 Annual Convention of the State Bar, the Conference of Bar Association Delegates met at the Palace Hotel, San Francisco, on the 18th of September, with Chairman Thomas C. Ridgway of Los Angeles presiding.

Eighty-eight delegates, representing 34 bar organizations answered the roll call. The late arrivals increased the number of delegates and organizations represented at the afternoon session.

Of the thirty-nine delegates named to represent the Los Angeles Bar Association, twenty-nine answered the morning roll call. When the names of the twenty-six delegates of the San Francisco Bar Association were called, only five answered "present," a fact which lead the Chairman to inquire "How far is San Francisco from here?"

The Conference got right down to business, without speeches, and the Credentials Committee made its report in fifteen minutes. A Resolutions Committee was named, with J. W. McKinley of Los Angeles as Chairman, and a Nominating Committee, with Lafayette Smallpage of San Joaquin, Chairman.

Officers for 1936.

The following officers for 1936 were elected:

Florence Michael McAuliffe (San Francisco Bar), *Chairman;* Harrison Ryon (Santa Barbara County Bar), *First Vice-Chairman*; Augustin Donovan (Alameda County Bar), *Second Vice-Chairman*; Dudley Harkleroad, San Francisco, *Secretary.*

Executive Committee—Herbert White, Sacramento County Bar; Julius Patrosso, Los Angeles County Bar Association; Frank Macomber, San Diego Bar Association; Dudley Harkleroad (State Bar) Secretary.

Junior Unit Within the State Bar

By Charles E. Sharritt, of the Los Angeles Bar

URGED by a group of Los Angeles and San Francisco attorneys, definite steps for the organization and development of a strong junior unit within the State Bar are well under way.

Suggested by Grant B. Cooper of the local city attorney's office, the plans call for the formation of a junior section of the younger members of the California legal profession to function as an integral part of the State Bar body.

The purpose and function of the new unit will be to co-ordinate into one body the several local junior organizations, give the younger members added incentive to participate in the activities of the state organization and to provide an effective statewide group to assist in carrying out the State Bar program.

In nearly a dozen eastern states similar organizations have been formed in recent years and the results have resulted in much praise and commendation from outstanding leaders of the bar. Reports from these states are enthusiastic in voicing the opinion that the junior units are considered an almost indispensable adjunct of state organization.

Several cities in California now have junior organizations within the bar association of the city. The largest of these is the Junior Barristers of the Los Angeles Bar Association. This body, presided over by E. Avery "Jud" Crary, has played an active part in local bar activities the past few years and has been highly successful in its operation.

In the San Francisco Bar Association a junior group known as the Barristers' Club has been functioning for some time, and Oakland has a similar organization known as the Lawyers' club.

The first definite step toward launching the new unit was taken recently when Mr. Cooper went to San Francisco and conferred there with leaders of the junior groups in that city and Oakland. The younger attorneys in those cities are enthusiastic in their desires to co-operate and develop the idea, Mr. Cooper reported.

In effect, the plan is comparable to the Junior Bar Conference within the American Bar Association. At the recent national convention here the Junior Conference definitely established itself as an active and effective part of the nation-wide lawyers' organization.

Following the conference at San Francisco, Mr. Cooper presented the plan to the State Bar governors in a communication to President Norman A. Bailie, who responded promptly to the suggestion. He arranged for a conference with Mr. Cooper and Stanley M. Reinhaus, bar governor from Santa Ana. At this meeting the aid and co-operation of the state organization was pledged to the movement.

In a communication to Archibald B. Tinning, Martinez member of the state board of governors, Mr. Reinhaus stated, in part:

"Mr. Cooper advised us that the Junior Bar desired to have their organization meeting in San Francisco concurrently with the annual meeting of the State Bar, and that thereafter they desired to work not as an independent organization, but as a section or division of the State Bar, directly in line with its program.

"We all realize that the Junior Bar Movement is an important movement in the country at this time and we have agreed that it should be given every assistance by the State Bar."

At the organization meeting in San Francisco during the recent state convention, representatives of the junior group selected the following officers: W. I. Gilbert, Jr., *president*; Francis Cross, Jr., of San Francisco, *first vice-president*; John F. Turner, Oakland, *second vice-president;* John Lonegan, San Bernardino, *third vice-president*; and Charles Crail, Jr., Los Angeles, *secretary-treasurer.*

Two members from each Appellate District were chosen to comprise an executive council. Those named for the Los Angeles area are E. Avery Crary and J. Thomas Russell.

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